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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LAW OFFICES OF MARK  
WAECKER, APC,

Plaintiff and Respondent,

v.

PIUS KIM et al.,

Defendants and Appellants.

B268212

(Los Angeles County  
Super. Ct. No. BC531287)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mel Red Recana, Judge. Affirmed.

Moon & Dorsett, Dana M. Dorsett and Jeremy Cook for Defendants and Appellants.

Richard D. Rome for Plaintiff and Respondent.

## I. INTRODUCTION

Defendants, Pius Kim, Arkius, Inc., CK Dimensions, Corp. and Elka, LLC, appeal from a judgment confirming an arbitration award. Defendants retained plaintiff, the Law Offices of Mark Waecker, APC, as their attorney for several cases. Plaintiff sought payment for legal services and costs incurred during its representation of defendants. The parties also signed a release and settlement agreement regarding unpaid attorney's fees. Defendants did not pay plaintiff all its fees. Plaintiff later filed suit against defendants for the unpaid attorney's fees. The dispute then proceeded to arbitration before an American Arbitration Association panel. Defendants filed a cross-claim for legal malpractice. Following arbitration, the arbitrator found in favor of plaintiff and against defendants as to all claims. The trial court confirmed the arbitration award.

Defendants assert the trial court erred by failing to consider their arguments that the retainer and release and settlement agreements were illegal and against public policy. We affirm the judgment. Defendants have failed to demonstrate the agreements were illegal or violated any well-settled public policy so as to permit the arbitrator's award to be vacated.

## II. BACKGROUND

### A. Retainer Agreements, Release and Settlement Agreement, and Assignments of Judgment

Plaintiff is a professional corporation operated by Mr. Waecker. Mr. Waecker is a licensed California attorney. Arkius, Inc., CK Dimensions, Corp. and Elka, LLC are California corporations. CK Dimensions, Corp. was dissolved prior to the conclusion of the arbitration proceedings. Mr. Kim, a California licensed contractor, was the president of all three codefendants.

Plaintiff entered into several retainer agreements with defendants. On October 17, 2008, Mr. Kim individually and on behalf of Elka, LLC retained plaintiff as their attorney for litigation. Plaintiff represented Elka, LLC in litigation against Steven Haah. Plaintiff performed legal services for Mr. Kim and Elka, LLC but did not receive full payment. As of March 2012, Mr. Kim and Elka, LLC still owed plaintiff \$19,046.23.

On May 7, 2009, Mr. Kim, individually and on behalf of Arkius, Inc. and CK Dimensions Corp. entered into a retainer agreement with plaintiff as their attorney. Plaintiff represented Arkius, Inc. and CK Dimensions Corp. in litigation. Some of the attorney's fees incurred by plaintiff were paid. However, plaintiff was still owed \$67,422.35 as of March 2012.

On September 21, 2009, Mr. Kim individually and on behalf of CK Dimensions Corp. retained plaintiff as their attorney for litigation against Freshia Market. Plaintiff

also performed legal services and incurred costs related to this representation. By August 2011, plaintiff was owed over \$90,000 in legal services and incurred costs as a result of the Freshia Market litigation.

The parties entered into negotiations regarding the unpaid attorney's fees. On March 14, 2012, the parties executed a release and settlement agreement. Mr. Kim agreed to pay plaintiff \$86,468.58 under a payment schedule. Mr. Kim and Mr. Waecker, on plaintiff's behalf, agreed to mutually release each other from all claims. The parties also agreed to waive their rights under Civil Code section 1542. The release and settlement agreement at paragraph J provides: "WAECKER has advised KIM that this agreement requires KIM to consult with independent legal counsel concerning the advisability of entering into this settlement and confirming the terms herein. KIM acknowledges and represents to WAECKER that he has taken advantage of advice of independent legal counsel prior to executing this agreement. KIM understands the risks, dangers and consequences hereof." Plaintiff received no payment under the March 14, 2012 release and settlement agreement.

Mr. Kim, individually and on behalf of Arkius, Inc. separately entered into a fourth retainer agreement with plaintiff on March 14, 2012. Plaintiff represented Arkius, Inc. in litigation against Hyundai Health Center. Plaintiff incurred costs related to its legal services in the amount of \$150,972.87. Plaintiff was paid only \$25,135.37. Plaintiff was still owed \$125,817.50.

Plaintiff obtained a judgment in favor of CK Dimensions, Corp. in the Freshia Market litigation on June 18, 2010. Mr. Kim on behalf of CK Dimensions, Corp. signed two separate assignments of judgment, dated August 3, 2010, and February 5, 2013, respectively. Mr. Kim assigned these judgments to pay for the outstanding legal fees owed to plaintiff.

#### B. Plaintiff's Complaint and Arbitration

Plaintiff filed a complaint against defendants on December 20, 2013. Plaintiff filed an amended complaint on February 26, 2014. Plaintiff alleged defendants breached the release and settlement agreement and the March 14, 2012 retainer agreement. The matter was arbitrated before an American Arbitration Association arbitrator pursuant to an arbitration provision in the four retainer agreements. Plaintiff filed his claim in arbitration on July 14, 2014. During the arbitration proceeding, plaintiff requested an award of: \$19,046.23 plus interest against Mr. Kim and Elka, LLC under the release and settlement agreement; \$67,422.35 plus interest against Mr. Kim and Arkius, Inc. under the release and settlement agreement; and \$125,817.50 plus interest against Mr. Kim and Arkius, Inc. under the March 14, 2012 retainer agreement.

Defendants filed their counterclaim in arbitration on March 2015. Defendants asserted the following during the arbitration proceedings. Defendants alleged plaintiff committed legal malpractice and breached its fiduciary

duty to them. Defendants alleged: plaintiff failed to provide proper accountings of collected funds for CK Dimensions, Corp.; plaintiff failed to properly record a judgment which caused damage to CK Dimensions, Corp.; plaintiff failed to inform Mr. Kim of its conflict of interest regarding recovery of his attorney fees; plaintiff failed to record a judgment thereby causing damage to Elka, LLC; plaintiff initiated a court action to attempt to collect attorney's fees while still representing Elka, LLC; plaintiff and Mr. Kim had an oral agreement that it would work on a contingency basis for the second Arkius, Inc. case; and plaintiff initiated a court action to attempt to collect attorney's fees while still representing Arkius, Inc.

Defendants asserted the retainer agreements failed to contain proper disclosures regarding conflicts of interest. Defendants argued, "There is no information in writing as required by Rule 3-310 of the relevant circumstances and the reasonably foreseeable adverse consequences to each [client]." Defendants contended the release agreement was unfair and void because plaintiff failed to comply with conflict of interest notification rules.

During the arbitration proceeding, according to the arbitrator, Mr. Kim testified "there was no counsel other than" plaintiff who represented defendants. There is no reporters transcript of the arbitration hearing. Mr. Kim testified at the arbitration proceeding that he did not fully understand the release and settlement agreement. He also testified that he did not seek separate legal advice concerning the settlement and release agreement. Again, these statements concerning Mr. Kim's testimony are

drawn from the arbitrator's award. Defendants argued Mr. Kim's testimony demonstrated the release falsely claimed he had received legal advice from other counsel prior to signing the release.

### C. Arbitrator's Award

On August 14, 2015, the arbitrator issued the final award. The arbitrator found in favor of plaintiff and against defendants as to all claims. The arbitrator made the following evidentiary findings: plaintiff submitted credible evidence that the legal services provided to defendants and the fees charged were reasonable; the attorney-client relationship was open and communication was clear; defendants were never under duress in retaining plaintiff or approving any legal services performed; and there was no evidence ever Mr. Kim was confused or uncertain due to an inability to understand English or any written documents. Mr. Kim testified he was aware that he and the codefendants owed plaintiff the charged fees; and Mr. Kim was unable to pay plaintiff only because he lacked the funds to do so.

Regarding the release and settlement agreement, the arbitrator found: Mr. Kim's testimony was self-serving and lacking in credibility; Mr. Kim had no issues conducting his business using documents written in English; the release and settlement agreement had three separate paragraphs in which defendants represented they sought and had received legal advice concerning the agreement; and defendants' malpractice claims violated the applicable

statute of limitations. The arbitrator awarded plaintiff: all its requested fees plus interest attorney's fees and costs related to the arbitration proceeding; for a total of \$323,320.58.

#### D. Trial Court's Confirmation of Award

On August 28, 2015, plaintiff filed a petition to confirm the arbitration award. Defendants asserted the retainer and release and settlement agreements were illegal. Defendants also argued the award would contravene public policy. Defendants repeated the same arguments that they raised before the arbitrator. Defendants submitted to the trial court the arbitrator's award and their arbitration briefing.

On October 20, 2015, the trial court issued its order granting the petition. The trial court ruled: "The evidence is insufficient that the arbitrator exceeded his powers. Defendants raised the same arguments in the arbitration that they are raising now. Defendants contend that the arbitrator disregarded their arguments as to the illegality of the of the retainer agreements, release, and assignments; thus, incorrectly deciding the issues. This court's review is limited, and the court does not find that the arbitrator did not have power to reach the issues. The court does not determine whether the arbitrator correctly decided the issues." Judgment was entered on October 22, 2015.



### III. DISCUSSION

#### A. Standard of Review

An arbitrator's decision is generally not reviewable for factual or legal errors. (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916; *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 6; *Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21, 33.) Code of Civil Procedure section 1286.2 describes the limited exceptions to this rule concerning our limited power to review for legal or factual errors: "Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following: [¶] . . . (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." (*Ahdout v. Hekmatjah, supra*, 213 Cal.App.4th at p. 33.) Whether the arbitrator exceeded her or his powers is reviewed de novo. (*Richey v. AutoNation, Inc., supra*, 60 Cal.4th at p. 918, fn. 1; *Ahdout v. Hekmatjah, supra*, 213 Cal.App.4th at p. 33.) We review the trial court's order confirming an arbitration award de novo. (*Richey v. AutoNation, Inc., supra*, 60 Cal.4th at p. 918, fn. 1; *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9.) The trial court's determination of disputed factual issues are reviewed for substantial evidence. (*Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 890, fn. 7; *Cochran v. Rubens* (1996) 42 Cal.App.4th 481, 486.)

## B. Trial Court's Determination of Legality of the Agreements

Defendants contend the trial court erred by failing to determine the legality of the retainer and release and settlement agreements. We disagree. The trial court's order is not precise. The trial court concluded its order by noting it does not determine whether the arbitrator correctly decided issues. But the trial court expressly found the evidence was *insufficient* to find that the arbitrator exceeded his powers. In our view, that is sufficient to resolve the matter in terms of whether the arbitrator exceeded his powers.

## C. The Retainer Agreements

But even if the trial court failed to properly determine whether the agreements were illegal, based upon the evidence presented, they were not. Defendants argue plaintiff failed to disclose a conflict of interest. The Court of Appeal has defined a conflict of interest: "A conflict arises when the circumstances of a *particular case* present 'a substantial risk that the lawyer's *representation of the client* would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person.' [Citation.]" (*In re Jasmine S.* (2007) 153 Cal.App.4th 835, 843-844; accord, *Sharp v. Next Entertainment, Inc.* (2008) 163 Cal.App.4th 410, 426.)

Defendants assert there was a conflict of interest in the retainer agreements. Defendants contend an attorney fee agreement with insufficient disclosure of conflict of interest is invalid. Defendants rely on two decisions for this proposition. The first opinion is *Image Technical Service, Inc. v. Eastman Kodak Co.* (9th Cir. 1998) 136 F.3d 1354, 1357-1359 (*Image Technical Service, Inc.*). The second opinion is *Jeffry v. Pounds* (1977) 67 Cal.App.3d 6, 9-12 (*Jeffry*). *Image Technical Service, Inc.* relies on *Jeffry*. (*Image Technical Service, Inc.*, *supra*, 136 F.3d at p. 1358.) *Jeffry* in turn relies upon the Rules of Professional Conduct.<sup>1</sup> (*Jeffry*, *supra*, 67 Cal.App.3d at pp. 9-10.) Both cases hold that an attorney may not recover attorney's fees when there is a conflict of interest. (*Image Technical Service, Inc.*, *supra*, 136 F.3d at p. 1358; *Jeffry*, *supra*, 67 Cal.App.3d at p. 12.) However, neither decision holds a fee agreement is illegal if an attorney fails to disclose a conflict of interest. Defendants are effectively asserting that a violation of the professional conduct rules renders a fee agreement illegal and thus permits overturning an arbitration award. Whether a court may rely on the professional conduct rules as a public policy expression to overturn an arbitration award on illegality grounds is pending before our Supreme Court. (*Sheppard, Mullin, Richter & Hampton v. J-M Manufacturing*, review granted April 27, 2016, S232946.) We expressly do not reach the issue pending before our Supreme Court however. Even if a violation of professional conduct rules rendered the

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<sup>1</sup> Future references to a rule are to provisions of the Rules of Professional Conduct.

retainer agreement illegal, defendants have failed to present evidence that such a violation occurred.

Defendants assert plaintiff's financial interest in representing Mr. Kim was solely for the purpose of securing another means of being paid its attorney's fees. Mr. Kim was not a party to any of the four cases in which plaintiff represented the codefendants. Defendants contend plaintiff's financial interest was a conflict of interest which it failed to disclose to Mr. Kim.

Rule 3-310(B)(4) applies when a lawyer "has or had a legal, business, financial, or professional interest in the subject matter of the representation." Our Supreme Court explained: "The language of rule 3-310(B)(4) . . . applies only to conflicts that arise over 'the subject matter of the representation' that the attorney undertakes for the client, and not to conflicts the attorney and client may have outside this subject matter. The primary purpose of this prophylactic rule is to prevent situations in which an attorney might compromise his or her representation of the client in order to advance the attorney's own financial or personal interests. [¶] . . . Rule 3-310(B)(4) . . . addresses not the existence of general antagonism between lawyer and client, but tangible conflicts between the lawyer's and client's interests in the subject matter of the representation. [Fn. omitted.]" (*Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal.4th 525, 546-547; see *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 823; *Barnard v. Langer* (2003) 109 Cal.App.4th 1453, 1459.) Rule 3-310(B)(4) does not refer to a conflict between the lawyer and the client outside of the

subject matter of the litigation. (*Santa Clara County Counsel Attys. Assn. v. Woodside*, supra, 7 Cal.4th at pp. 546-547; see *Oasis West Realty, LLC v. Goldman*, supra, 51 Cal.4th at p.; see Vapnek et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group 2015) ¶ 4:256.4 [“An attorney fee dispute with an existing client is not itself an interest in the *subject matter* of the representation and does not pose a conflict of interest between the client and attorney.”].) Defendants have presented evidence of a fee dispute. But defendants have presented no evidence of a conflict of interest that involves the subject matter of the representation within the meaning of rule 3-310(B)(4).

Defendants also argue plaintiff violated the duty of loyalty by not disclosing its intentions in having Mr. Kim be a client. To begin with, there is no evidence supporting this contention in the arbitration record or on appeal. In any event, rule 3-300 provides, “A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client . . . .” Defendants’ argument is meritless. Rule 3-300 does not apply to retainer agreements. (*Chan v. Lund* (2010) 188 Cal.App.4th 1159, 1176; *Law Offices of Dixon R. Howell v. Valley* (2005) 129 Cal.App.4th 1076, 1104 [unsecured promissory note does not give an attorney a present interest in the client’s property which can be summarily realized and therefore is not subject to rule 3-300].)

Defendants’ citation to other professional conduct rules are also meritless. Defendants contend plaintiff

violated rule 3-310(F)(3) which provides: “A member shall not accept compensation for representing a client from one other than the client unless: [¶] . . . [¶] (3) The member obtains the client’s informed written consent . . . .”

Defendants assert plaintiff failed to receive the codefendants written consent to have Mr. Kim pay plaintiff and enter into the various agreements. Mr. Kim always acted on behalf of the codefendants, of which he was president, when he signed the retainer agreements. Thus, the codefendants provided written consent to have Mr. Kim make arrangements for the payment of plaintiff’s attorney’s fees.

Defendants contend plaintiff violated rule 3-600(E) which provides: “A member representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 3-310.” There is no evidence Mr. Kim and the codefendants had conflicting interests that required disclosures under rule 3-310. In conclusion, defendants have failed to demonstrate reversible error regarding the retainer agreements’ legality.

### C. The Release and Settlement Agreement

Defendants argue: the release and settlement agreement is illegal; the release contains no disclosure of any conflict of interest or waiver of conflict; the release falsely states Mr. Kim had received legal advice from independent counsel; other than their appellate counsel, plaintiff was Mr. Kim’s only attorney; and the release and

settlement agreement violates rule 3-310, as discussed above, and rule 3-400(B). Rule 3-400(B) provides, “A member shall not: [¶] . . . [¶] (B) Settle a claim or potential claim for the member’s liability to the client for the member’s professional malpractice, unless the client is informed in writing that the client may seek the advice of an independent lawyer of the client’s choice regarding the settlement and is given a reasonable opportunity to seek that advice.”

As conceded by defendants, defendants submitted to the trial court the arbitrator’s award, the arbitration briefing, and their trial court briefing. On appeal, a judgment or final order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) All intendments and presumptions are made to support the judgment or final order on matters as to which the record is silent. (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 564; *Cahill v. San Diego Gas & Electric Co., supra*, 194 Cal.App.4th at p. 956.) And, there is no reporter’s transcript of the hearing or an agreed or settled statement. Finally, there is no transcript of the arbitration proceeding. The only evidence presented to the trial court regarding Mr. Kim’s arbitration proceeding testimony came from the arbitrator’s award. The arbitrator’s award explicitly categorized Mr. Kim’s testimony as not credible.

Additionally, based on the present record, Mr. Kim had received adequate disclosures. On August 29, 2011, plaintiff e-mailed Mr. Kim a proposed settlement agreement. It is undisputed Mr. Kim received this e-mail.

Later, on September 13, 2011, plaintiff mailed the proposed settlement agreement to Mr. Kim. The proposed settlement agreement contained the same language in paragraph J as the signed release and settlement agreement dated March 14, 2012. This language in paragraph J satisfies rule 3-400(B). It was provided as early as August 29, 2011, which gave defendants over six months to seek advice from independent counsel regarding the settlement. Whether Mr. Kim chose to seek this independent counsel is immaterial. Plaintiff satisfied his obligations under professional conduct rules. Based on the record, and with all presumptions in favor of the judgment when the record is silent, no reversible error occurred as to the release and settlement agreement.

#### D. Assignments of Judgment

Defendants also assert the assignments of judgment are void because they lack disclosures of conflict of interest. The arbitration award did not rely on the assignments. Thus, this argument is immaterial. Additionally, defendants have failed to identify what conflicts of interest required disclosure. Based on the assignments' language, defendants were well aware the assignments were to satisfy plaintiff's fees owed by defendants. As noted, disputes between the attorney and the client regarding attorney's fees do not require disclosures of conflicts of interest. (*Vapnek et al., op. cit.*)



### E. Other Public Policy Arguments

Defendants cite a plethora of statutes to contend the arbitration award would violate public policy if confirmed. Our Supreme Court held: “Arbitrators may exceed their powers by issuing an award that violates a party’s unwaivable statutory rights or that contravenes an explicit legislative expression of public policy. [Citations.]” (*Richey v. AutoNation, Inc.*, *supra*, 60 Cal.4th at p. 916; *Moncharsh v. Heily & Blase*, *supra*, 3 Cal.4th at p. 32.) Here, there is insufficient evidence of a violation of an explicit legislative expression of public policy.

Defendants initially contend plaintiff violated the professional conduct rules and thus violated Business and Professions Code section 6077 which provides: “The rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all members of the State Bar. [¶] For a wilful breach of any of these rules, the board has power to discipline members of the State Bar by reproof, public or private, or to recommend to the Supreme Court the suspension from practice for a period not exceeding three years of members of the State Bar.” As discussed above, defendants have failed to present evidence indicating plaintiff violated any of the professional conduct rules.

Defendants also argue the arbitration award violates Business and Professions Code section 6201, subdivision (a). Business and Professions Code section 6201 requires an attorney prior to suing a client for fees must provide written notice that the client can pursue arbitration.

(*Huang v. Cheng* (1998) 66 Cal.App.4th 1230, 1234.) The right to arbitrate expires 30 days after receipt of the written notice. (Bus. & Prof. Code, § 6201, subd. (a).) On April 17, 2013, plaintiff sent a letter to Mr. Kim notifying him of his right to arbitrate. Defendants' only argument is that plaintiff's Business and Professions Code section 6201 notice was addressed only to Mr. Kim, not to the codefendants. No violation of Business and Professions Code section 6201 occurred. Mr. Kim was plaintiff's client. Mr. Kim was also the president of the codefendants. Plaintiff sent the notification letter well before he filed the complaint against defendants.

And, defendants assert the arbitration award violates Code of Civil Procedure section 340.6, subdivision (a)(2), which is part of the legal malpractice statutes of limitation. Code of Civil Procedure section 340.6, subdivision (a)(2) identifies the tolling period for the legal malpractice statutes of limitations. The tolling period includes any time frame during which the attorney continues to represent the plaintiff regarding the subject matter in which the alleged wrongful act occurred. As noted, the arbitrator had alternatively found defendants' counterclaims were time-barred. Defendants have failed to identify any cases indicating a statute of limitations involves a well-defined public policy under these circumstances. As noted, an arbitrator's decision is generally not reviewable for factual or legal errors. (*Richey v. AutoNation, Inc.*, *supra*, 60 Cal.4th at p. 916; *Moncharsh v. Heily & Blase*, *supra*, 3 Cal.4th at p. 6; *Ahdout v. Hekmatjah*, *supra*, 213 Cal.App.4th at p. 33.)

In addition, defendants argue the arbitration award violates Business and Professions Code section 6068, subdivision (m), which provides: “It is the duty of an attorney to do all of the following: [¶] . . . [¶] (m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.” Defendant asserts plaintiff failed to respond to Mr. Kim’s repeated requests for an accounting of funds collected from the CK Dimensions, Corp. and Elka, LLC judgments. Defendant has presented no citation to the record or other evidence in support of this contention. Where the record is silent, we infer in favor of the judgment. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564; *Cahill v. San Diego Gas & Electric Co.*, *supra*, 194 Cal.App.4th at p. 956.)

Further, defendants contend the arbitration award violates Business and Professions Code sections 6106 and 6068, subdivision (d). Business and Professions Code section 6106 provides in pertinent part, “The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.” Business and Professions Code section 6068, subdivision (d) states: “It is the duty of an attorney to do all the following: [¶] . . . (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by

an artifice or false statement of fact or law.” Defendants assert plaintiff was dishonest regarding the release and settlement agreement. Namely, defendants contend plaintiff failed to explain the consequences of signing the release and affirmatively misrepresented that Mr. Kim had consulted independent counsel. As discussed above, this argument is without merit. Mr. Kim, by signing the release and settlement agreement, indicated he had consulted independent counsel. And Mr. Kim’s arbitration proceeding testimony was never submitted to the trial court. All we have is the arbitrator’s award which states that Mr. Kim was not credible. None of defendants public policy related arguments have any merit. We need not address the parties’ remaining contentions.

#### IV. DISPOSITION

The judgment is affirmed. Plaintiff, the Law Offices of Mark Waecker, APC, shall recover its appellate costs from defendants, Pius Kim, Arkius, Inc., CK Dimensions Corp., and Elka, LLC.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J.

KUMAR, J. \*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.